

(7) (6) (2)

Nos. 83-1362, 83-1363 & 83-6392

In the Supreme Court of the United States

October Term, 1983

Office, Supreme Court, U.S.
E. D.

JUL 27 1984

THE CLEVELAND BOARD OF EDUCATION
Petitioner,

ANDER L. STEVAS,
CLERK

VS.

JAMES LOUDERMILL, *et al.*

PARMA BOARD OF EDUCATION,
Petitioner,

VS.

RICHARD DONNELLY, *et al.*

JAMES LOUDERMILL,
Petitioner,

VS.

THE CLEVELAND BOARD OF EDUCATION, *et al.*

ON WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

Counsel for Parties on Inside Cover

**Petitions for Certiorari in Nos. 83-1362 and 83-1363
Filed February 14, 1984; Petition for Certiorari in
No. 83-6392 Filed March 7, 1984
Certiorari Granted May 21, 1984**

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RELEVANT DOCKET ENTRIES

I. Loudermill Case:

- 10/27/81 1 AFFIDAVIT of Pltf., to proceed in forma pauperis filed.
- 11/ 6/81 2 MEMORANDUM of Opinion, denying pltf's motion to proceed in forma Pauperis; the case is dismissed with prejudice for failure to state a claim upon which relief can be granted; the court hold the delay which occurred in processing Loudermill's appeal in the instant case does not constitute a violation of his procedural due process rights filed. Manos, J.—copies mailed (noted 11/9/81)
- 11/ 6/81 3 ORDER, pursuant to the Memorandum of Opinion, issued on this date, the Pltf's motion to proceed in forma pauperis is denied & the case is dismissed with prejudice filed Manos, J. copies mailed (noted 11/9/81)
- 11/16/81 4 MOTION of Pltf., for a new trial or to alter or amend Judgment, with brief in support and exhibits in support filed. copies mailed 11/16/81
- 1/19/82 5 SUPPLEMENTAL BRIEF of pltfs. in support of their motion for a new trial or to alter or amend judgment filed. Copy mailed 1/19/82

- 2/22/82 6 MEMORANDUM OPINION & order denying pl'tfs.' joint motion to alter or amend court's previous decision filed. Manos, J. (2/22/82)
- 2/22/82 7 ORDER denying pl'tfs.' joint motion to alter or amend judgment filed. Manos, J. (2/22/82).
- 3/23/82 8 NOTICE of Appeal filed re: 2/22/82. c/m Hickey, (by Pltf.) and USCA. (notice to def't. indiv.)
- 3/23/82 9 MOTION of Pltf. to proceed in forma pauperis filed. c/m 3/23/82. with affidavit attached.
- 3/29/82 10 MEMORANDUM of opinion denying pl'tf's. motion to leave to proceed in forma pauperis to USCA. Manos, J.
- 3/29/82 11 ORDER denying pltf. motion for leave to appeal in forma pauperis to USCA. Manos, J.
- 4/ 6/82 CERTIFIED original pleadings mailed to Clerk, USCA.
- 4/21/82 ACKNOWLEDGEMENT of Transmission form from USCA case no. 82-3227 filed in USCA 3/29/82, filed.
- 12/13/83 MANDATE from U.S.C.A. (issued: 12/9/83) before: Merritt, Wellford, & Timbers, C.J., on judgment entry that this case be and the same is hereby affirmed in part; vacated and remanded in part filed. Costs: Pending
- 12/13/83 OPINION filed.

RELEVANT DOCKET ENTRIES

II. Donnelly Case:

- | | | |
|-----------|---|--|
| 10/27/81 | 1 | COMPLAINT filed. |
| 10/27/81 | 2 | INITIAL ORDER filed. Manos, J. (noted 10/27/81) |
| 10/27/81 | | SUMMONS issued. 7 copies of complaints Notices re: Magistrates, Initial Orders and summons to U.S.Marshals. |
| 11/ 6/81 | 3 | MEMORANDUM of Opinion dismissing Pltf's complaint for failure to state a claim upon which relief can be granted; this Court hold Donnelly's allegation fails to state a claim of constitutional dimension under 42 U.S.C. §1983 filed. Manos, J. - copies mailed (noted 11/9/81) |
| 11/ 6/ 81 | 4 | ORDER, pursuant to the Memorandum of Opinion issued on this date, the Pltf's complaint is dismissed filed. Manos, J. - copies mailed (noted 11/9/81) |
| 11/16/81 | 5 | MOTION of Pltf., for a new trial or to alter or amend Judgment, with brief in support & exhibits in support filed. copies mailed 11/16/81 (See C81-2132) |
| 11/20/81 | 6 | SUMMONS returned and filed. - Served Ralph Scheel, 11/2/81; served Parma Board of Education 11/2/81; Served Mayor of City of Parma, John Petruska 11/2/81; served Leo Hepner 11/2/81; served Parma Civil Service Commis- |

sion 11/2/81 served Donald Narus.
FEES: \$86.00

- 12/ 8/81 7 SUMMONS returned & filed. - Re: William J. Brown, Atty. General of Ohio Unexecuted - FEES: \$3.00
- 1/19/82 8 SUPPLEMENTAL BRIEF of pltfs. in support of their motion for a new trial or to alter or amend judgment filed. Copy mailed 1/19/82
- 2/ 4/82 9 NOTICE of John T. Meredith of Appearance on behalf of deft. Board of Education of the Parma City School District filed. Copy mailed 2/4/82.
- 2/22/82 10 MEMORANDUM OPINION & order denying pltf.'s joint motion to alter or amend previous decision filed. Manos, J. (See 81-2132)
- 2/22/82 11 ORDER denying pltfs.' joint motion to alter or amend judgment filed. Manos, J. (See 81-2132).
- 3/23/82 12 NOTICE of Appeal filed re: 2/22/82. C.M. Hickey & Fertel, Meredith and USCA. filed.
- 4/ 6/82 CERTIFIED original pleadings mailed to Clerk, USCA
- 4/ 2/82 Letter of City of Parma to list Mr. Boyko and Mr. Bond as Counsel for City of Parma, filed. (n.4/6/82)
- 4/21/82 ACKNOWLEDGEMENT of Transmission form from USCA case no. 82-3226 filed in USCA 3/29/82, filed.

12/13/83 MANDATE from U.S.C.A. (issued:
12/9/83) before: Meritt, Wellford, &
Timbers, C.J. Judgment entry that
this case be and the same is hereby
affirmed in part; vacated and remanded
in part filed. Costs: Pending.

12/13/83 OPINION filed.

Case No. C81-2132
 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF OHIO
 EASTERN DIVISION

JAMES LOUDERMILL, Individually and on behalf of all
 others similarly situated,
Plaintiff,

vs.

CLEVELAND BOARD OF EDUCATION JOHN GAL-
 LAGHER, PRESIDENT, Individually and on behalf of all
 others similarly situated,

and

CITY OF CLEVELAND GEORGE V. VOINOVICH,
 MAYOR, Individually and on behalf of all others
 similarly situated,

and

CLEVELAND CIVIL SERVICE COMMISSION THOMAS
 R. SKULINA, PRESIDENT, Individually and on behalf
 of all others similarly situated,

and

WILLIAM J. BROWN Attorney General, State of Ohio,
Defendants.

**COMPLAINT FOR MONETARY INJUNCTIVE
 AND DECLARATORY RELIEF**

(Affidavit of Plaintiff to proceed in forma pauperis
 filed October 27, 1981)

[2] JURISDICTION

1. The jurisdiction of this Court is invoked pursuant
 to 28 United States Code Sections 1343 (3) and 4, 2201,

and 2202. This is an action for damages, injunctive and declaratory relief authorized by 42 United States Code Section 1983 to be commenced by the Plaintiff and the class he represents, as a citizen of the United States, to redress the deprivation, by Defendants' actions under color of Ohio Revised Code Section 124.34, of rights served by the Fourteenth Amendment to the Constitution of the United States.

2. Jurisdiction is also conferred on this court by 28 United States Code Section 1331 this being a suit wherein the matter in controversy exceeds the sum of Ten thousand dollars (\$10,000.00), exclusive of interest and costs, arising under the Constitution and laws of the United States.

PARTIES

3. The Plaintiff is a resident of the City of Cleveland, County of Cuyahoga and State of Ohio and is a citizen of the United States and was a classified civil service employee pursuant to the laws of the State of Ohio.

4. Defendant Cleveland Civil Service Commission is an organizational division of the Defendant City of Cleveland.

5. Defendant Cleveland Board of Education is an appointing authority pursuant to the civil service laws of the State of Ohio.

6. Defendant William J. Brown is the Attorney General of the State of Ohio and is named as a party defendant in this action solely because the constitutionality of a certain Ohio Statute is being drawn into question. None of the allegations that follow apply to William J. Brown and no relief is sought against him.

CLASS ACTION

7. Plaintiff brings this action pursuant to Rules 23 (a), 23 (b) (4) (B) and 23 (b) (2) of the Federal Rules of Civil Procedure. Plaintiff's class [3] consists of all classified civil service employees in the State of Ohio who have been or who could be suspended or removed from their employment without sufficient due process procedures.

8. Defendant Cleveland Board of Education represents all appointing authorities in the State of Ohio pursuant to the Ohio Civil Service laws who have failed or who will fail to provide sufficient due process procedures prior to the removal or suspension of classified civil service employees.

9. Defendant Cleveland Civil Service Commission represents all civil service commissions in the State of Ohio who have failed or who will fail to afford sufficiently prompt hearings under the due process clause for removed or suspended civil service employees.

10. Plaintiff's class is so numerous as to make it impracticable to bring them all before the court, there are questions of law and fact common to the class, the claims of the plaintiff are typical of the claims of the class, and he will fairly and adequately protect the interests of the class.

11. The Defendants' classes are so numerous as to make it impracticable to bring them all before this Court, there are questions of law and fact common to the member of the classes, the defenses of the Defendants are typical of the defenses of the classes, and the Defendants will fairly and adequately protect the interests of the class.

CAUSE OF ACTION

12. The Plaintiff worked in the summer of 1979 as a security guard for a private security firm which provided guards to the Cleveland City School District under contract.

13. Said firm went defunct and the plaintiff began working for the defendant Cleveland Board of Education on September 22, 1979.

14. On September 25, 1979 the plaintiff filled out an application for a non-teaching position as a security guard with said defendant.

[4] 15. The plaintiff stated in said application that he had never been convicted of a felony and he was hired as a security guard with the Business Department of the Defendant Cleveland Board of Education. The plaintiff was a classified civil service employee pursuant to the civil service laws of the State of Ohio who had a legitimate claim of continued employment absent sufficient "cause" for removal.

16. On September 1, 1980 the plaintiff was transferred to the jurisdiction of the newly formed Department of Safety and Security.

17. A record check was conducted on all employees in said department in October, 1980 which revealed that the plaintiff was convicted of grand larceny in 1968.

18. On November 3, 1980, George Mazzaro, Business Manager for the Defendant Cleveland Board of Education sent a letter to the plaintiff advising him that he was being removed from his employment for dishonesty.

19. The plaintiff was not given any opportunity prior to his removal to respond to the charges against him

although he had a legitimate defense since he thought that he was convicted of a misdemeanor.

20. The plaintiff filed a Notice of Appeal of his removal with the defendant Cleveland Civil Service Commission on November 12, 1980. A hearing before a referee of said defendant was originally scheduled for January 22, 1981 but was continued until January 29, 1981 when a hearing was actually held.

21. The referee filed and served his recommendations on or about April 1, 1981. A hearing was held before the full civil service commission on July 20, 1981 which announced its decision that it would affirm the plaintiff's removal.

22. The defendant Cleveland Civil Service Commission approved a proposed findings of fact and conclusions of law on August 10, 1981 and advised plaintiff's attorneys of said fact by letter dated August 21, 1981.

[5] 23. The plaintiff was denied due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution by the defendants Cleveland Board of Education and Cleveland Civil Service Commission when he was given no opportunity prior to his removal to respond to the charges against him and when he was denied a speedy resolution to his claim that his removal was unlawful and unfair.

24. The plaintiff suffered loss of compensation and other benefits, plus mental distress and anguish, anxiety, humiliation and embarrassment and loss of credit and reputation. The plaintiff has been prevented from obtaining suitable employment because of the reasons of his removal and the record thereof.

25. Ohio Revised Code Section 124.34 is unconstitutional on its face because it provides no opportunity for a classified civil service employee to respond to the charges against him prior to his removal or suspension.

26. Ohio Revised Code Section 124.34 is unconstitutional as applied because the thirty (30) day time limit for an appeal hearing has been determined not to be mandatory and because classified civil service employees are not given sufficiently prompt post-removal or post-suspension hearings.

WHEREFORE, the plaintiff prays for the following relief:

1. That he be reinstated to his position and awarded his back-pay and other benefits plus simple interest for the time that he was unlawfully deprived of his employment, and

2. Compensatory damages in the amount of One hundred thousand dollars (\$100,000.00), and

3. A judgment declaring Ohio Revised Code Section 124.34 unconstitutional on its face and as applied, and

4. Preliminary and Permanent Injunctions prohibiting the removal or suspension of classified civil service employees without full compliance with the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution, and

[6] 5. Preliminary and Permanent Injunction ordering reinstatement with full back pay and other benefits plus interest; and

6. Certification of this case as a class action; and

7. That the Defendants be ordered to pay the plaintiff for his costs in prosecuting this case including a sum for his reasonable attorney fees.

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By: JOHN W. HICKEY and ROBERT M.
FERTEL
Attorneys at Law

Case No. C81-2133

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

RICHARD DONNELLY, Individually and on behalf
of all others similarly situated,
Plaintiff,

vs.

PARMA BOARD OF EDUCATION ROBERT M.
KOSCIELNY, PRESIDENT Individually and on
behalf of all others similarly situated,
and

CITY OF PARMA JOHN PETRUSKA, MAYOR,
Individually and on behalf of all others
similarly situated,
and

PARMA CIVIL SERVICE COMMISSION LEO HEPNER,
CHAIRMAN, Individually and on behalf of all others
similarly situated,
and

LEO HEPNER,
and

RALPH SCHEEL,
and

DONALD NARUS,
and

WILLIAM J. BROWN, Attorney General, State of Ohio,
Defendants.

**COMPLAINT FOR MONETARY INJUNCTIVE
AND DECLARATORY RELIEF**

(Filed October 27, 1981)

[2] JURISDICTION

1. The jurisdiction of this Court is invoked pursuant to 28 United States Code Sections 1343 (3) and 4, 2201. This is an action for damages, injunctive and declaratory relief authorized by 42 United States Code Section 1983 to be commenced by the Plaintiff and the class he represents, as a citizen of the United States, to redress the deprivation, by Defendants' actions under color of Ohio Revised Code Section 124.34, of rights served by the Fourteenth Amendment to the Constitution of the United States.

2. Jurisdiction is also conferred on this court by 28 United States Code Section 1331 this being a suit wherein the matter in controversy exceeds the sum of Ten thousand dollars (\$10,000.00), exclusive of interests and costs, arising under the Constitution and laws of the United States.

PARTIES

3. The Plaintiff is a resident of the City of Independence, County of Cuyahoga and State of Ohio and is a citizen of the United States and was a classified civil service employee pursuant to the laws of the State of Ohio.

4. Defendant Parma Civil Service Commission is an organizational division of the Defendant City of Parma.

5. Defendant William J. Brown is the Attorney General of the State of Ohio and is named as a party defendant in this action solely because the constitutionality of a certain Ohio Statute is being drawn into question. None of the allegations that follow apply to William J. Brown and no relief [3] is sought against him.

7. Defendants Leo Hepner, Ralph Scheel and Donald Narus are members of the Parma Civil Service Commission and are sued individually and in their official capacities.

CLASS ACTION

8. Plaintiff brings this action pursuant to Rules 23 (a), 23 (b) (4) (B) and 23 (b) (2) of the Federal Rules of Civil Procedure. Plaintiff's class consists of all classified civil service employees in the State of Ohio who have been or who could be suspended or removed from their employment without sufficient due process procedures.

9. Defendant Parma Board of Education represents all appointing authorities in the State of Ohio pursuant to the Ohio Civil Service laws who have failed or who will fail to provide sufficient due process procedures prior to the removal or suspension of classified civil service employees.

10. Defendant Parma Civil Service Commission represents all civil service commissions in the State of Ohio who have failed or who will fail to afford sufficiently prompt hearings under the due process clause for removed or suspended civil service employees.

11. Plaintiff's class is so numerous as to make it impracticable to bring them all before the court, there are questions of law and fact common to the class, the claims of the plaintiff are typical of the claims of the class, and he will fairly and adequately protect the interests of the class.

12. The Defendants' classes are so numerous as to make it impracticable to bring them all before this Court, there are questions of law and fact common to the member of the classes, the defenses of the Defendants are typical of the defenses of the classes, and the Defendants will fairly and adequately protect the interests of the class.

CAUSE OF ACTION

13. The Plaintiff is a bus mechanic with the Defendant Parma Board of Education who is a classified employee pursuant to the civil service laws of [4] the State of Ohio who had a legitimate claim of continued employment absent sufficient "cause" for his removal.

14. The Plaintiff was advised by letter dated August 17, 1977 that he would be removed from his employment because of his failure to pass an eye-examination.

15. The Plaintiff was given no opportunity prior to his removal to respond to the charges against him except that he was permitted to take another eye-examination.

16. The Plaintiff had a legitimate defense to his removal because another employee who could not pass an eye-examination was not removed.

17. The Plaintiff's order of removal was not filed the Defendant Parma Civil Service Commission until September 9, 1977.

18. The Plaintiff filed a Notice of Appeal with said Defendant on August 31, 1977. Said Defendant refused to hear the Plaintiff's appeal because it was not filed within ten (10) days after the order of removal was mailed.

19. However the appeal period to the civil service commission pursuant to Ohio Revised Code Section 124.34 does not commence until the orders of removal is filed with civil service commission.

20. The plaintiff filed a Complaint for a writ of mandamus in the Cuyahoga County Court of Appeals on May 9, 1978, case number 39370. An alternative writ of mandamus was issued by Judge Corrigan.

21. At the hearing on the alternative writ of mandamus it was agreed that the plaintiff would have an appeal hearing within thirty (30) days.

22. Said hearing was conducted on May 30, 1978 and the Defendant Parma Civil Service Commission ordered the Plaintiff reinstated on July 6, 1978.

23. The Plaintiff was denied Equal Protection of the law as guaranteed by the Fourteenth Amendment to the United States Constitution by the Defendant Parma Board of Education when another mechanic who could not pass an eye-examination was not removed.

24. The Plaintiff was denied due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution by the Defendants [5] Parma Board of Education, Parma Civil Service Commission, and its individual members when he was given no opportunity prior to his removal to respond to the charges against him and when he was denied a speedy resolution of his claims that his removal was unlawful and unfair.

25. The Plaintiff was denied his rights to substantive time due process as guaranteed by the Fourteenth Amendment to the United States Constitution when the Defendant Parma Board of Education arbitrarily and discriminately removed him from his employment because the eye-examination was not reasonably related to his job duties.

26. The Plaintiff was denied due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution by the Defendants Parma Civil Service Commission Leo Hepner, Ralph Scheel, and Donald Narus when said Defendants failed to follow established state procedures as described in this Complaint.

27. The Plaintiff suffered loss of compensation and other benefits, plus mental distress and anguish, anxiety, humiliation and embarrassment and loss of reputation.

28. Ohio Revised Code Section 124.34 is unconstitutional on its face because it provides no opportunity for a classified civil service employee to respond to the charges against him prior to his removal or suspension.

29. Ohio Revised Code Section 124.34 is unconstitutional as applied because the thirty (30) day time limit for an appeal hearing has been determined not to be mandatory and because classified civil service employees are not given sufficiently prompt post-removal or post-suspension hearings.

WHEREFORE, Plaintiff prays for the following relief:

1. That he be awarded his back pay and other benefits plus simple interest for the time that he was unlawfully deprived of his employment; and

2. Compensatory damages in the amount of Twenty-five thousand dollars (\$25,000.00); and

[6] 3. A judgment declaring Ohio Revised Code Section 12-3- unconstitutional on its face and as applied; and

4. Preliminary and Permanent Injunctions prohibiting the removal or suspension of classified civil service employees without full compliance with the requirements of the due process clause of the Fourteenth Amendment to the United States Constitution; and

5. Certification of this case as a class action; and

6. That the Defendants be ordered to pay the Plaintiff for his costs in prosecuting this case including a sum for his reasonable attorney fees.

Respectfully submitted,

HICKEY LEGAL CLINIC

3794 West 25th Street

Cleveland, Ohio 44109

(216) 749-6556

By: JOHN W. HICKEY and ROBERT M.
FERTEL

Attorneys at Law

**MATTERS CONTAINED IN PETITIONS FILED IN
CASE NO. 83-1362 (LOUDERMILL) AND CASE
NO. 83-1363 (DONNELLY)**

Decision/Order	Donnelly Petition (83-1363)	Loudermill Petition (83-1362)
Decision of the United States Court of Appeals for the Sixth Circuit (November 17, 1983)	A1	A1
Memorandum of Opinion and Order of the United States District Court [Donnelly Case] (November 6, 1981)	A34	—
Memorandum of Opinion and Order of the United States District Court [Loudermill Case] (November 6, 1981)	A40	A34
Memorandum of Opinion of the United States District Court (February 22, 1982)	A56	A50
Judgment Entry of the United States Court of Appeals for the Sixth Circuit (November 17, 1983)	A69	A63

